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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE APPEAL OF THE
JOINT BOARD OF THE HAUSER AREA OF
CITY IMPACT OF KOOTENAI COUNTY,
IDAHO

HAUSER LAKE ROD AND GUN CLUB, INC.,
an Idaho non-profit corporation,

Petitioner/Appellant,

vs.

KOOTENAI COUNTY, a political subdivision of
the State of Idaho, and CITY OF HAUSER, a
municipal corporation,

Respondents/Respondents.

Supreme Court Docket No. 44095-2016

Kootenai County District Court
Consolidated Case No. CV-2015-820

APPELLANT'S OPENING BRIEF

Appeal from the District Court of the First Judicial District in the State of Idaho,
in and for the County of Kootenai

The Honorable Rich S. Christensen Presiding

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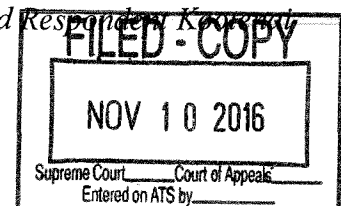


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INTRODUCTION

The Hauser Lake Rod and Gun Club, Inc. (Club) owns a parcel of property in the unincorporated area of Kootenai County, and is not a resident of the City. The Club's parcel lies within the City of Hauser's area of city impact. The appeal before the Court involves the City of Hauser Code Administrator's issuance of a notice of violation of a city ordinance to the Club.

The notice of violation claimed the Club was a grandfathered use, and had violated the City's zoning code by operating outside of its historical hours of operation. The notice informed the Club it could appeal the code administrator's interpretation of the code under Title 8, Chapter 10 of the Hauser Municipal Code.

The Club appealed the notice of violation and ultimately prevailed. However, the Club was denied its request for attorney fees against the City under Idaho Code section 12-117 because of the convoluted process the City forced the Club to utilize to exhaust its administrative remedies.

Yet stripped of the convoluted proceedings surrounding the appeal of the City's notice of violation, the core of the challenged adverse action remains a code enforcement action by the City against a non-resident. At the end of the day, the Club prevailed against the City and should have been awarded attorney fees against the City pursuant to Idaho Code section 12-117 despite the tortuous route it was forced to take to exhaust its administrative remedies.

RECORDS ON APPEAL

The district court case was a consolidated appeal. There were two records in the consolidated appeal. One related to Case No. CV-13-6783 and consisted of two volumes of records and a hearing transcript. The bulk of documents related to the code enforcement action and an unrelated building permit application were included in this record. The Club requested on appeal to this Court that the entire clerk's record be prepared on appeal. When this was not done

by the district clerk, the Club moved the trial court to augment the record on appeal to include the entire clerk's record. R. pp. 306-307. The trial court ordered the record augmented. R. pp. 314-315. Despite the Club's best efforts, the record and hearing transcript from Case No. CV-13-6783 were not filed with this Court. Therefore, a motion to augment was filed and references to these records will be as augmented records.

The other record related to case no. CV-2015-820 and consisted of one volume of records bates numbered pages 1-169, a supplemental volume bates numbered 170-172, as well as a hearing transcript. This record was lodged on appeal as an exhibit. Cites to the lodged record will be cited as "820 R" followed by the bates numbered page.

STATEMENT OF THE CASE

A. Nature of the Case

The City of Hauser Code Administrator issued a code enforcement violation against county resident Hauser Lake Rod and Gun Club, Inc. A.R. pp. 42-43. (See Appendix A). The Club exhausted its administrative remedies, and the violation was ultimately dismissed because it was determined the City had no jurisdiction to issue a violation of city code against a non-resident. A.R. pp. 55-61. However, the Kootenai County Board of Commissioners (after sitting as part of a joint board with the City mayor and council president) declined to award attorney fees against the City to the Club pursuant to Idaho Code section 12-117. 820 R. pp. 164-168. (See Appendix B).

B. Course of the Proceedings

Because the statement of facts below addresses the complex proceedings leading up to the appeal in this matter, this statement only involves the course of proceedings following the appeal

of the County's last decision to the district court, and not the prior administrative proceedings related to the appeal of the code enforcement violation notice.

The Club appealed the County's refusal to award it attorney fees to the district court. R. pp. 116-118. The district court affirmed the County's denial of the Club's request for attorney fees against the City of Hauser. R. pp. 275-318. This appeal followed. R. pp. 298-300.

C. Statement of Facts

Typically, the statement of facts on an adverse City action commences with an appeal of the adverse action followed by facts demonstrating exhaustion of administrative remedies, and an appeal to the district court. In this case, the facts resemble Homer's *Odyssey*, and includes the Club's journey through a labyrinth of administrative processes that boggle the mind. The district court politely labeled it "a procedural nightmare for all involved." R. p. 275. But it was not a nightmare of the Club's making.

The Club is a non-profit shooting club and owns a parcel of property in the unincorporated area of Kootenai County. A.R. p. 31-38. It is not a resident of the City of Hauser. *Id.*

In February 2012, the Club decided to replace three old storage sheds on its property with a pole barn. 6738 R. pp. 13-19. Towards that end, its builder applied to Kootenai County for a building permit. *Id.*; 6738 R. p. 91. Kootenai County instructed the builder to submit the building permit to the City because the Club's property was within the area of city impact, and it needed to apply to the City for a Class II permit. 6738 R. pp. 13-19, 140-146.

The builder submitted the permit and paid the costs to process the permit. A.R. pp. 7-13. The City scheduled a public hearing on the permit application before the City's planning commission. *Id.* The City then scheduled a public hearing on the building permit application. *Id.* So far, so good. The Club was on its way to obtaining a building permit approval.

After the public hearing, the first diversion in the Club's quest to build a pole barn occurred. The City Code Administrator informed the Club that the City had used an improper process and a public hearing would have to be rescheduled in front of the joint planning commission. A.R. pp. 7-13. Certainly, disappointing news but not insurmountable. The Club agreed the proper process should be followed. A.R. p. 8. The Club paid additional fees for a new hearing. A.R. p. 34.

Enter now the City attorney to throw a new wrinkle in the quest for a building permit. The City attorney advised that the correct permit for a pole barn was a Class I building permit application (which would not require a public hearing). A.R. p. 8, 34. At the behest of the City attorney, the Club's contractor submitted a new building permit application. A.R. p. 8. The City attorney assured the Club's attorney there should be no problems getting the Class I permit finalized so the Club could begin construction. *Id.*

But not so fast. Rather than issuing the Club a building permit as expected, the City's Code Administrator issued a notice of violation to the Club for allegedly operating outside its historical hours of operation in violation of the City's Development Code. A.R. pp. 42-43. At this point, the Club withdrew its building permit application. A.R. pp. 14-20.¹

The notice of violation informed the Club any appeal would be controlled by Title 8 Chapter 10 of the Hauser Municipal Code. A.R. p. 43. The Club appealed the code violations. A.R. pp. 2-13. The City required the Club pay a \$500 appeal fee, which was done under protest since there was no code section requiring such payment. A.R. pp. 7-13, 24. The Club prepared a brief in support of its appeal. A.R. pp. 7-13.

¹ This exchange was an e-mail in which one party inserted comments to the other. To assist the Court in discerning which actor is communicating, the e-mail is attached at Appendix C, with the City's communication highlighted in yellow.

The attorneys for the Club and the City subsequently exchanged letters regarding the alleged code violation and appeal. A.R. pp. 2-6; 44-48. The City attorney specifically advised the Club “[t]he City of Hauser cannot ignore the lawful processes that requires it to investigate what it reasonably believes is a violation of its Code. The City does not believe that enforcement of its Code is in any way ‘an unlawful exercise of its police powers’ as you state in your letter. The City hopes that the Hauser Gun Club increases its sensitivity of its neighbors’ private property rights, and does not act as if its real property parcel exists alone on the moon without neighbors.” *Id.*

Typical of fickle Greek gods meddling with mortals on an epic journey, the City then required the Club follow a serpentine administrative process to exhaust before it could appeal the code enforcement violation. The City scheduled the matter for hearing before a joint planning and zoning commission on September 25, 2012. A.R. pp. 49-50. Deliberations were held on December 11, 2012. A.R. pp. 51-53. A hand-written appeal decision was issued on December 11, 2012 affirming the City’s code violation. A.R. p. 54.

Approximately a week after the order was prepared, the City verbally informed the Club it had ten (10) days to appeal the joint planning commission’s decision on appeal, or the administrator’s decision on the code violation would become final. A.R. p. 19. The Club’s attorney contacted the City Code Administrator to clarify the appeal process moving forward because it bore no resemblance to the referenced ordinance process for exhaustion of administrative remedies referenced in the City’s notice of violation, and to assure the Club exhausted its administrative remedies. A.R. p. 18. (See Appendix C.)

In another unexpected turn in the journey, the Code Administrator decreed the City required the Club to appeal the violation of the City ordinance to the Board of County Commissioners and the City acting as a joint board under the area of city impact ordinance. A.R.

pp. 18-19; 25-29. The code administrator explained this appeal process was being utilized by the City because it was her belief that all provisions of the Hauser ACI code applied in the area of city impact, including enforcement of city code violations, and not just the provisions regarding permit application procedures. A.R. p. 17. Therefore, the Code Administrator made the decision to utilize the ACI ordinance appeal process. *Id.*

The Club appealed on January 8, 2013. A.R. pp. 92-93. The Club's counsel contacted the County's counsel to discuss the status of hearing the pending appeal in March, 2013, and avenues available to the Club to resolve the impasse in which the Club found itself (as it still had no scheduled appeal hearing, the County and City disagreed on what type of building permit was required, and the County and City disagreed who controlled the permit process). 6738 R. pp. 149-150. The County attorney followed up by letter to the Club's attorney and the City's attorney opining that the hearing before the County was part of the administrative remedies the Club had to exhaust. *Id.* The letter also took the strong position that the City had no jurisdiction over code enforcement actions with respect to county properties within the area of city impact. *Id.* More months passed with no appeal hearing scheduled, and the Club eventually filed a declaratory judgment action on June 21, 2013, asking the Court to declare whether the City could issue code enforcement violations against non-residents, to declare the City did not control Class I permits under the area of city impact ordinance negotiated between the City and the County, and to declare the City's role with respect to Class II building permits within the area of city impact was to give a recommendation to the County. 6738 R. pp. 140-146. The County finally scheduled the appeal

hearing for August 1, 2013 before a joint board. 6738 R. p. 128. Following the hearing, the County determined the City did not have jurisdiction to issue a code violation. 6738 R. pp. 271-277.²

The Club requested reconsideration of the Board's failure to address its request for an attorney fee award under I.C. § 12-117. R. p. 278. The motion was never addressed. *Id.* The Club appealed to the district court, which was assigned Case No. CV-13-4626. R. pp. 278-279. The issue on appeal was whether the Club was entitled to attorney fees pursuant to I.C. §12-117. R. p. 279.

The district court sitting in its appellate capacity remanded the matter to the joint board to determine if the City acted without a reasonable basis in fact or law. R. p. 280. It also held that the joint commission was not an agency or political subdivision and dismissed the appeal with respect to the joint commission. *Id.* The district court also found the County acted only as a reviewing body, and dismissed the request for fees against the County. *Id.*

The Club filed a petition for rehearing. R. pp. 104-105. The primary issue raised was the finality of the judgment and the premature issuance of the remittitur before the time for appeal had ran, and seeking clarification if the decision was intended to be final. *Id.* The district court gave no response to the petition.

The joint board took up the attorney fee issue on December 18, 2014, and the County issued a second final decision. R. p. 280. The Club raised its concern that the hearing was procedurally incorrect so as not to waive its rights. 820 Tr. p. 6, L. 23 – p. 10, L. 2. The Board found the Club prevailed but declined to award attorney fees because the City's actions were reasonable under

² Only the County issued the decision, although the Joint Board heard the matter. At the hearing, the County commenced the hearing by indicating the City mayor and council president were present in an advisory capacity only. Tr. p. 4, L. 6 – p. 5, L. 14.

law or fact. 820 R. pp. 164-168. (See Appendix B.) The Club appealed that decision, and the appeal was assigned Case No. CV-2015-820. R. p. 116.

On the second appeal, the parties agreed the two district court appeals should be consolidated because of the undecided state of the first appeal. R. p. 281. The district court determined the clarification requested by the Club in the petition for rehearing was no longer justiciable. R. p. 283. The district court issued a decision finding the Club prevailed on the adverse action taken against it by the City, but affirmed the joint board's refusal to award the Club attorney fees against the City. R. pp. 275-292. This appeal followed. R. pp. 298-300.

ISSUES PRESENTED ON APPEAL

1. Did the district court abuse its discretion by misapplying the facts of the case to the appeal?
2. Did the District court misinterpret Idaho Code Section 12-117?

ATTORNEY FEES ON APPEAL

The Club requests attorney fees on appeal pursuant to I.C. § 12-117 and I.A.R. 41. As argued throughout this brief, the Club was the victim of adverse action by the City of Hauser. Despite a constitutional provision and clear precedent regarding the City's lack of jurisdiction to enforce its city code against non-residents, the City issued a zoning ordinance notice of violation to the Club. This matter is a continuation of such adverse action. Thus, the Club requests attorney fees on appeal.

ARGUMENT

A. Standard of Review on Appeal

The standard of review on interpretation of a statute is set forth in *Saint Alphonsus Regional Medical Center v. Gooding County*, 356 P.3d 377, 379-380, 159 Idaho 84, 86-877 (2015) applies, which held:

The interpretation of a statute is a question of law over which this Court exercises free review. *State v. Maidwell*, 137 Idaho 424, 426, 50 P.3d 439, 441 (2002). The object of statutory interpretation is to derive legislative intent. *State v. Schulz*, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011). Interpretation of a statute begins with the statute's literal words. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. *Id.* The Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. *Id.* When the statutory language is unambiguous, courts must give effect to the legislature's clearly expressed intent without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999).

However, if the statute is ambiguous, this Court must engage in statutory construction to ascertain legislative intent and give effect to that intent. *Id.* To ascertain the legislature's intent, this Court examines the literal words of the statute, the context of those words, the public policy behind the statute, and the statute's legislative history. *Id.* Courts must construe a statute "under the assumption that the legislature knew of all legal precedent and other statutes in existence at the time the statute was passed." *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 126 Idaho 145, 150, 879 P.2d 1078, 1083 (1994).

Regarding the application of I.C. § 12-117 to an award of attorney fees, in *State v. Keithly*, 155 Idaho 464, 314 P.3d 146 (2013), this Court held:

A district court's application of I.C. § 12-117 is reviewed for an abuse of discretion. *City of Osburn v. Randel*, 152 Idaho 906, 908, 277 P.3d 353, 355 (2012). We have described the standard of review of a discretionary decision of the trial court as follows:

Our inquiry is: (1) whether the trial judge correctly perceived the issue as one of discretion; (2) whether the trial judge acted within the outer boundaries of his or her discretion and consistently with the legal standards applicable to the specific available choices; and (3) whether the trial judge reached his or her decision by an exercise of reason.

Hudelson v. Delta Intl. Mach. Corp., 142 Idaho 244, 248, 127 P.3d 147, 151 (2005) (citing *Karlson v. Harris*, 140 Idaho 561, 568, 97 P.3d 428, 435 (2004)).

B. The district court abused its discretion by misapplying the facts to the law

In the first appeal of this matter, the district court found it premature for the court to rule upon the Club's request for attorney fees, and remanded "the issue of an award of attorney fees under I.C. section 12-117 against the City to the Joint Board for further determination as to whether such fees [were] appropriate and an analysis of prevailing party and whether the City acted without reasonable basis in fact or law." R. p. 280. On remand, the joint board heard the matter and the County issued an appellate decision finding the Club prevailed, but declining to award attorney fees under Idaho Code section 12-117 because the City's actions were reasonable under law or fact. 820 R. pp. 164-168. The Club appealed this intermediate appeal decision claiming the joint board abused its discretion in reaching this appellate decision. R. pp. 116-118.

On appeal, the district court consolidated the two district court appeals as the appeal issue in both was substantively the same. R. p. 281-282. The district court affirmed the Club prevailed on the code enforcement violation. R. p. 284. However, the district court held that I.C. section 12-117 did not grant the joint board the authority to make an award of attorney fees to the Club against the City. R. p. 285. Based on this holding, the district court held that the Club was not a prevailing party on the second appeal. R. p. 285.

In its analysis, the district court recognized it was exercising its discretion. R. p. 286. The Club contends on this appeal that the district court abused its discretion by acting inconsistently with the legal standards applicable to the specific choices available to it, which caused the district court to reach its decision without reason under the statute.

In its decision, the district court indicated that Club was seeking "...an award of attorney fees against the City for its initial erroneous decision to require a permit when it did not have the authority to act and Plaintiff's subsequent appeal to the Joint Commission." R. p. 287. That was not the basis for the attorney fees sought by the Club. The Club was appealing a code violation. The Class II permit was withdrawn before the Club took any of its steps required of it to exhaust its administrative remedies. The basis of the attorney fee request was the City's issuance of a code violation against a non-resident without a basis in law.

Perhaps the district court became lost because the Club's interaction with the City began as a permit application (which was later withdrawn). Or perhaps the district court was confused because of the unusual administrative procedures the City forced the Club to exhaust to appeal the code violation, which normally would only be utilized for a permit application. Nonetheless, the district court did not analyze the correct City action that was the subject of the Club's appeal, which was the issuance of a city zoning code violation against a non-resident of the City.

In a footnote to its decision, the district court recognized that *Blaha v. Bd. of Ada Cty. Comm'rs*, 134 Idaho 770, 777, 9 P.3d 1236, 1243 (2000) held:

Article XII, § 2 of the Idaho Constitution provides that any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws. This Court has held that the power of cities and counties only exists within the sovereign boundaries of the cities and the counties respectively. *See Clyde Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949) (valid county regulation enforceable so far as territory embraced in county was concerned, exclusive of municipalities where the regulation was without force and effect); *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977) (To give effect to a county permit within city limits would be to violate the separate sovereignty provisions of Idaho Const., art. XII, § 2.); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983) (ordinance or regulation must be confined to the limits of the governmental body enacting the same).

Despite recognizing this established precedent, the district court did not analyze on appeal the Club's contention that the joint board abused its discretion when it found the City was excused from paying attorney fees under I.C. § 12-117 because the City might have been confused about its authority to issue notices of violation to non-residents because of area of city impact ordinance.

Because the district court failed to discern the proper party that had taken adverse action against the Club, its analysis under I.C. § 12-117 was flawed. The district court recognized "for section 12-117 to apply to this litigation, Defendants must qualify as a political subdivision as provided by state. 12-117 defines the term as 'a city, a county, any taxing district or a health district[.]' R. p. 288. Despite recognizing this applicable provision, the district court erred by failing to discern the adverse party was the City.

C. The district court erred in its interpretation of I.C. § 12-117

Instead of looking to the core proceeding, and recognizing the City was the adverse party, the Court looked to the appeal bodies involved in the administrative process and whether I.C. § 12-117 gave the appeal bodies the power to award attorney fees. The district court recognized that the joint board included City officials and the Board of County Commissioners, both political subdivisions, but reasoned this fact alone did not determine the issue. R. pp. 288-289. The district court concluded based on the plain language of I.C. section 12-117 that the statute required a single political subdivision acting alone before award attorney fees could be awarded under the statute. *Id.*³

More specifically, the district court determined the entire issue hinged upon the use of the conjunctive word "or" in Idaho Code Section 12-117 when listing the entities who could award

³ The Club does not disagree with the district court's finding that attorney fees may not be awarded against either the joint planning commission or Kootenai County. These entities acted as review bodies in the exhaustion of the Club's administrative remedies, and were not the entities that issued the adverse action which was appealed.

The language of a statute is to be given its plain, obvious, and rational meaning. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). Further, the object of statutory interpretation is to derive legislative intent. The district court's interpretation does not comport with these requirements.

It is clear the statute was not intended to allow a political subdivision to insulate itself from an award of attorney fees based upon the administrative review process it established. In fact, this Court recognized the legislative intent of I.C. § 12-117 was to serve as a deterrent to groundless or arbitrary action and to provide a remedy for persons who had borne unfair and unjustified financial burden defending against groundless charges. *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, 136 Idaho 666, 671, 39 P.3d 606, 611 (2001). An award of attorney fees provides a remedy for persons who have borne an unfair and unjustified financial burden attempting to correct mistakes [political subdivisions] should never have made. *Fuchs v. Idaho State Police, Alcohol Beverage Control*, 153 Idaho 114, 117, 279 P.3d 100, 103 (2012) (quoting *Ralph Naylor Farms, LLC v. Latah County*, 144 Idaho 806, 809, 172 P.3d 1081, 1084 (2007)).

The fact that the City enlisted the County as part of its administrative review process does not change the fact that the City took adverse action against the Club which was unlawful, then required the Club to exhaust its administrative remedies using a process that included the County. The adverse action was the City's alone. Thus, the Club was entitled to have the joint board, which included the City, award it attorney fees.

Further, this Court has recognized bodies that are delegated duties of a City act with the City's authority. In *Fischer v. Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005), suit was brought against the City of Ketchum and the Ketchum Planning and Zoning Commission based upon the Commission's grant of a conditional use permit. The Commission issued findings of fact without

a required certification from a licensed engineer. This Court noted the decision was a final action of the City because the Commission acted with the authority of the governing body contrary to the arguments of the City. By the same analogy, the City delegated the administrative review of its adverse zoning violation notice to the joint board. As such, the joint board acted with the City's authority.

Finally, Idaho Code section 12-117 allows the court to award attorney fees in an appeal proceeding. The district court had the authority to award attorney fees against the City to the Club on appeal of the joint board decision as the matter before it was an appeal of an adverse City action. The district court did not address its power to do so. The district court abused its discretion when it failed to award attorney fees to the Club.

CONCLUSION

The City issued a zoning permit violation to a non-resident. Given the clear status of the law at the time this occurred, the City acted without a reasonable basis in law or fact. Thus, the Club requests this Court reverse that portion of the district court's decision declining to award attorney fees to the Club pursuant to Idaho code section 12-117 for the City's unlawful act.

Respectfully submitted this 8th day of November, 2016.

JAMES, VERNON & WEEKS, P.A.



SUSAN P. WEEKS
Attorneys for Appellant Hauser Lake Rod
and Gun Club

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8TH day of November, 2016, a true and correct copy of the within and foregoing instrument was served upon:

Patrick M. Braden P.O. Box 9000 Coeur d'Alene, ID 83816-9000	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 446-1621 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail
William Appleton 1424 Sherman Avenue, Suite 100 Coeur d'Alene, ID 83814	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 666-2519 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail

Christine Elmore

APPENDIX A



CITY OF HAUSER

11837 N. Hauser Lake Road

Hauser, Idaho 83854

Phone (208) 777-9315

Fax (208) 457-8457

June 8, 2012

Hauser Lake Rod Gun Club
P.O. Box 431
Post Falls, Idaho 83854

194-2011
197-2012
RECEIVED

APR 16 2013

KOOTENAI COUNTY
COMMUNITY DEVELOPMENT

RE: Hauser Lake Rod Gun Club- 51N05W-20-2770
Violations of Hauser Development Code

This letter is to inform you of information concerning potential violations of the Hauser Development Code on the site located at 24903 West Highway 53 in Hauser Idaho, including, but not limited to operating outside of the historical hours of operation which are Saturdays, Tuesdays, and Thursdays increasing the traffic and noise on the site.

1. Chapter 1 Division II Section F, Nonconforming Uses and Buildings of the Hauser Development Code cites: A nonconforming use or building complied with the regulations that existed at the time of its development, but would not comply with this title, if submitted for approval after its effective date. Nonconforming uses and buildings may continue subject to the requirements established herein:
 1. There shall be no limit on the maintenance and repair of nonconforming uses or buildings, provided that no such activity increases the degree of nonconformity. No repair or maintenance activity that has the potential to increase sewage flows will be permitted until the existing sewage disposal facilities are brought into compliance with current design standards.
 2. The use of a nonconforming commercial or industrial building or site may be changed, but only where:
 1. The new use is no more intense (with intensity measured by anticipated traffic generation, anticipated noise generation, the number of parking spaces required, the number and size of signs proposed and similar factors) than the existing;
 2. The degree of nonconformity is in no way increased; and
 3. The existing sewage disposal facilities are brought into compliance with current design standards.

Chapter III, Division I, B of the Hauser Development Code delineates the permit and performance requirements for any and all development within the Hauser Planning Area which requires permits for development including changes in land

use activities and states that a Class II permit is required for the construction or establishment of any commercial or industrial development, including any major change in use in an existing commercial or industrial site or structure.

Based upon the following information, you have the following options:

1. Continue operating at the Gun Club's posted hours of Saturday, Tuesday, and Thursdays only or
3. Submit a completed Class II permit application for a commercial use by July 13, 2012 or
4. Appeal the interpretation of the Code Administrator under Title 8 Chapter 10 of the Hauser Municipal Code.

If you do not respond with one of the above items by July 13, 2012, further enforcement action will be instituted which may include but is not limited to injunction and/or civil and criminal penalties.

The Code may be found online at www.cityofhauser.org or by contacting the City Clerk during office hours at Hauser City Hall.

If you have any questions or need further clarification or assistance, don't hesitate to contact Cindy Espe at 208-818-9053.

Sincerely,

Cindy Espe
City of Hauser Code Administrator

C: City Attorney

APPENDIX B

**BEFORE THE JOINT BOARD OF THE HAUSER AREA OF CITY IMPACT
OF KOOTENAI COUNTY, IDAHO**

IN THE MATTER OF THE HAUSER)	CASE NO. APP13-0002
LAKE ROD AND GUN CLUB, AN)	
APPEAL OF THE HAUSER JOINT)	FINDINGS OF FACT, APPLICABLE
PLANNING COMMISSION DECISION)	LEGAL STANDARDS, ANALYSIS,
UPHOLDING THE CITY OF HAUSER'S)	CONCLUSIONS OF LAW AND ORDER
ISSUANCE OF A CODE VIOLATION.)	OF DECISION IN RE: ATTORNEY FEES

I COURSE OF PROCEEDINGS

- 1.01 On December 11, 2012, the Hauser Joint Planning Commission ("Joint Commission") conducted a public hearing where they issued a decision upholding a code violation issued by the Hauser Code Administrator, Cindy Espe, against the Hauser Lake Rod and Gun Club ("Gun Club"). The Gun Club is located outside the city limits of the City of Hauser ("the City"), but within the City's Area of City Impact (ACI). The Gun Club appealed the decision of the Joint Commission on or about January 8, 2013.
- 1.02 Appeals of decisions of the Joint Commission pertaining to property within the ACI are heard by a Joint Board comprised of the Board of County Commissioners and two (2) representatives of the City of Hauser city council, one of whom may be the mayor ("the Joint Board"). While all members of the Joint Board may participate in the hearing and in post-hearing deliberations, only the members of the Board of County Commissioners may make the final determination in any matter before the Joint Board.
- 1.03 On August 1, 2013, the Joint Board conducted an appeal hearing, in which City representatives, Gun Club representatives, and affected parties were all given opportunity to speak and address the Joint Board regarding this matter. The Gun Club raised several issues, but the threshold issue was whether or not the City of Hauser properly had jurisdiction for the issuance of a code violation against the Gun Club, and accordingly, whether the Joint Commission had jurisdiction to hear and decide an appeal of that action.
- 1.04 At the conclusion of the Joint Board's deliberations, Commissioner Green moved that the Joint Board determine that the City of Hauser did not have the authority to issue a code violation in this matter, and that as a result of that decision, the remaining five (5) appeal issues need not be addressed. Commissioner Nelson seconded the motion. The Board of County Commissioners, comprising the three (3) voting members of Joint Board, unanimously voted in favor of the motion. The Joint Board declined to award attorney fees to any party at that time. The Joint Board entered its Order of Decision on August 22, 2013.
- 1.05 The Gun Club filed a petition for judicial review of the Joint Board decision on September 19, 2013. Neither the Gun Club nor the City contested the Joint Board's decision on jurisdiction. Rather, the primary issue raised was whether the decision of the Joint Board to decline to award attorney fees in favor of the Gun Club in the administrative proceedings below was an abuse of discretion. The parties also raised the issue of whether attorney fees should be awarded in the petition for judicial review itself.

- 1.06 The Court heard oral argument on the petition for judicial review on February 11, 2014. On February 18, 2014, the Court entered a Memorandum Decision and Order on Appeal, in which it found that the Joint Board had erred in declining to consider the attorney fee issue. Thus, the Court remanded the case to the Joint Board for further proceedings related to that issue.
- 1.07 On December 18, 2014, the Joint Board held a second appeal hearing on remand from the District Court to consider the issue of whether the Gun Club was entitled to attorney fees against the City. Susan Weeks, legal counsel for the Gun Club, argued that the City acted without factual or legal foundation because there was no legal basis for the issuance of a code violation by the City under the ACI agreement based on case law regarding ACIs. She also argued that the City's argument failed because the Joint Commission is not a political subdivision under section 12-117, Idaho Code.

William Appleton, legal counsel for the City, conceded that the Gun Club was the prevailing party in this appeal, but argued that the legal basis for the actions of the Code Administrator and the Joint Commission was the ACI agreement (County Ordinance No. 289). He argued that the ACI agreement provides that the City Code Administrator is to review Class II permit applications and apply the Hauser Development Code, which the ACI agreement adopted within the ACI. The procedures of the Hauser Development Code apply within the ACI, except as modified in the ACI agreement. Finally, he argued that only the Joint Commission acted, but that there was no action by the City Council, and the City cannot control the actions of Joint Commission.

On rebuttal, Ms. Weeks argued that it was not within the scope of remand to reconsider whether the City had jurisdiction to issue the code violation. She argued that the finding of lack of jurisdiction for an action does naturally include a finding that there was no basis for the action, and therefore, the Joint Board had already found that the City acted without a basis in law. The scope of authority given in the ACI agreement is specific to the processing of a Class II permit within the ACI, but does not extend to the enforcement of City codes. Finally, she argued that section 12-117, Idaho Code, covers all of the entities involved in an appeal.

- 1.08 The Joint Board then conducted deliberations on this issue. The Hauser city council members stated that Joint Commission decisions are final, subject only to appeal to the Joint Board, and that the Code Administrator enforces decisions of the Joint Commission as provided in the ACI agreement. They believed that the City acted reasonably. Commissioner Green reiterated that jurisdiction was the threshold issue, and that the other issues were moot. The members of the Joint Board struggled with the argument that the City was the party responsible for the actions of the Joint Commission, when the District Court had ruled that the Joint Commission was not an entity against which attorney fees could be assessed under section 12-117, Idaho Code. Copies of Chapter III of the version of the Hauser Development Code in effect within the ACI were provided to the Joint Board. During deliberations, Ms. Weeks objected to the fact that the members of the Joint Board representing the City had been offering comments.
- 1.09 At the conclusion of deliberations, Commissioner Nelson moved to find that the Gun Club was the prevailing party, but that it was not entitled to attorney fees because the City acted with a reasonable basis in fact and law. Commissioner Tondee seconded the motion. The motion carried by a 2-1 vote, with Commissioner Green dissenting.

II FINDINGS OF FACT

- 2.01 **Property Owner/Applicant.** Hauser Lake Rod and Gun Club, 24903 W. Highway 53, Hauser ID 83854.
- 2.02 **Applicant's Representative.** Susan Weeks, James, Vernon & Weeks, P.A., 1626 N. Lincoln Way, Coeur d'Alene ID 83814.
- 2.03 **City of Hauser Representatives.** William Appleton, City of Hauser Attorney, and Cindy Espe, City of Hauser Code Administrator, 11837 N. Hauser Lake Road, Hauser ID 83854.
- 2.04 **Appeal.** The Property Owner is appealing the December 11, 2012 Hauser Joint Planning Commission decision which upheld the code violation issued by Hauser Code Administrator Cindy Espe. (**Exhibits A-6, Letter of Appeal; A-9, Appeal Supplement**)
- 2.05 **Location and Legal Description.** The site is located at 24903 West Highway 53, Hauser ID 83854, Kootenai County, Idaho. The parcel number is 51N05W-20-2770. The serial number is 128084. (**Exhibit S-9, Assessor's Information**)
- 2.06 **Area of City Impact.** The site is located within the ACI for the City of Hauser.
- 2.07 **Zoning Designation.** The site is split zoned. The southwestern portion of the property lies within the Highway Corridor zone, while the remainder of the property lies within the Hauser Hills zone. (**Exhibit S-3, Zoning Map**)

III APPLICABLE LEGAL STANDARDS

- 3.01 Section 12-117, Idaho Code, states that "in any proceeding involving as adverse parties ... a political subdivision and a person, the ... political subdivision ... hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law."
- 3.02 Kootenai County Ordinance No. 289, Hauser Area of City Impact Agreement. This ordinance sets forth the development standards and procedures which apply within the ACI for the City of Hauser. This ordinance was amended by Ordinance No. 385, effective August 18, 2006, which changed the development intensity applicable in each zone within the ACI.
- 3.03 Kootenai County Ordinance No. 290, as amended by Ordinance No. 372, Hauser Area of City Impact Map Ordinance. This ordinance provides a legal description and map of the ACI for the City of Hauser.
- 3.04 The City of Hauser Comprehensive Plan and the Hauser Development Code, as adopted via the enactment of the Hauser Area of City Impact Agreement and amendments thereto.

IV BOARD ANALYSIS

The Joint Board has previously found that the Code Administrator for the City of Hauser did not have the jurisdiction to issue a code violation in this matter, and that the Joint Commission likewise lacked jurisdiction to consider an appeal of the Code Administrator's action. What is now before the Joint Board, on remand from the District Court, is the issue of whether the Gun Club is entitled to an award of

attorney fees against the City. The City has conceded, and the Joint Board now decides, that the Gun Club is the prevailing party in this appeal.

The key to determining whether the Gun Club is entitled to an award of attorney fees lies in the resolution of the issue of whether an action of the Code Administrator which was determined to be outside of her jurisdiction is necessarily an action taken without a reasonable factual or legal basis. Because the merits of the underlying action were not reached as a result of the determination regarding jurisdiction, the focus will be on whether there was a reasonable legal basis for the action.

The ACI agreement provides that the Hauser Development Code (HDC) applies within the ACI to any development application requiring a "Class II" permit, as defined in the HDC. The ACI agreement specifically provides that Class II permit applications are to be "submitted to the City of Hauser for review in accordance with the procedures established in Section 5" of the ACI agreement. Initially, the Gun Club had submitted an application for a building permit which the County had determined, and the City had agreed, required a Class II permit under the HDC. However, while that application was in process, the Code Administrator, acting upon complaints from neighbors, issued a code violation for activities alleged to have been occurring on the same property. While the HDC has provisions regarding code enforcement, the ACI agreement is silent as to this issue.

The Code Administrator, however, acting on the advice of the City's then-legal counsel, believed that the ACI agreement incorporated all provisions related to administration and enforcement of the HDC, particularly when it may implicate the issuance or denial of a Class II permit. It was on that basis that she believed that she had the authority to issue a code violation. That action was appealed to the Joint Commission, which made a final decision (subject to appeal to the Joint Board) affirming the action of the Code Administrator. Neither the City Planning Commission nor the City Council were involved in this decision.

In the prior Order of Decision, the Joint Board found that the Code Administrator (and, by extension, the Joint Commission) erred in taking action on a code enforcement matter within the ACI because of lack of jurisdiction. Nevertheless, it cannot be said that there was no reasonable legal basis whatsoever for the Code Administrator's action. It was based on a reasonable, though erroneous, understanding of the powers conferred on the Code Administrator through the incorporation of the HDC into the ACI agreement. In addition, the Code Administrator could have reasonably believed that she was acting as an agent of the Joint Commission, as provided for in the ACI agreement, as opposed to "the City" *per se*. Neither basis for the Code Administrator's action had previously been the subject of litigation or administrative action. *See City of Osburn v. Randel*, 152 Idaho 906, 908-10, 277 P.3d 353, 355-57 (2012) (pointing out that "a governmental agency does not act without a reasonable basis in fact or law when its interpretation of a statute that has not been previously construed by the courts is incorrect, but not unreasonable.")

Accordingly, for these reasons, the Joint Board finds that while the Gun Club is the prevailing party in this appeal, it is not entitled to an award of attorney fees against the City because the Joint Board cannot find that the City acted without a reasonable basis in fact or law.

V CONCLUSIONS OF LAW

5.01 The Gun Club is the prevailing party in this administrative appeal.

5.02 The City of Hauser did not act without a reasonable basis in fact or law.

- 5.03 The Gun Club is not entitled to an award of attorney fees against the City for fees incurred in the course of this administrative appeal.

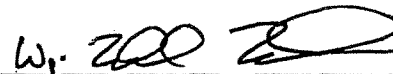

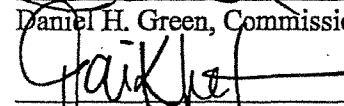
VI ORDER OF DECISION

Based upon the findings of fact, analysis and conclusions of law set forth in this document and the evidence and testimony provided at the hearing on this appeal, the Board of County Commissioners, acting in its capacity as the voting membership of the Joint Board for the Hauser Area of City Impact, **ORDERS** that the Hauser Lake Rod & Gun Club's request for an award of attorney fees against the City of Hauser shall be, and is hereby **DENIED**.

DATED this 8th day of January 2015 by the following vote:

BY ORDER OF THE KOOTENAI COUNTY BOARD OF COMMISSIONERS,
ACTING IN ITS CAPACITY AS THE VOTING MEMBERSHIP OF THE
JOINT BOARD FOR THE HAUSER AREA OF CITY IMPACT

Yea Nay

<input checked="" type="checkbox"/>	<input type="checkbox"/>	 W. Todd Tondee, Chairman
<input type="checkbox"/>	<input checked="" type="checkbox"/>	 Daniel H. Green, Commissioner
<input checked="" type="checkbox"/>	<input type="checkbox"/>	 Jai Nelson, Commissioner

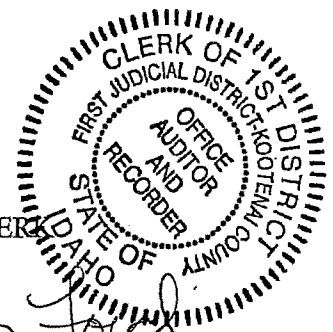
NO VOTE *Clare Hatfield, City of Hauser Mayor*

NO VOTE *Bill Ray, City of Hauser Council Member*

ATTEST:

JIM BRANNON, CLERK

BY: 
DEPUTY CLERK



C: Pat Braden, Civil Deputy Prosecuting Attorney; William Appleton, City of Hauser Attorney; Susan Weeks, Attorney for the Hauser Lake Rod and Gun Club

APPENDIX C

RE: Motion for Reconsideration

RECEIVED

APR 16 2013

ROBERTSON COUNTY
COMMUNITY DEVELOPMENT

From: **Cindy Espe** (cindyespe@hotmail.com)
Sent: Thu 12/27/12 3:13 PM
To: Susan Weeks (sweeks@jvwlaw.net)
Cc: Pat Braden (pbraden@kcgov.us); Dale Pritzl (debpritzl@hotmail.com);
Bill Appleton (saros223@gmail.com); Christine (christine@jvwlaw.net);
JDThompson Hauser Gun Club (jdthompson60@gmail.com); Scott Clark
(sclark@kcgov.us)
2 attachments
12-14-2011(2)[1].pdf (843.5 KB) , 12-27-2012(2).pdf (361.2 KB)

From: sweeks@jvwlaw.net
To: cindyespe@hotmail.com
CC: pbraden@kcgov.us; debpritzl@hotmail.com; saros223@gmail.com; christine@jvwlaw.net;
jdthompson60@gmail.com; sclark@kcgov.us
Subject: RE: Motion for Reconsideration
Date: Thu, 27 Dec 2012 14:04:55 -0800

Cindy:

Once again, thank you for your quick responses. I did not realize that the gun club had submitted to either the City or the County an application for approval of a conditional use permit expanding its grandfathered use. I was only aware of the building permit application for the accessory building and the zone violation. Could I please get a copy of the conditional use permit application submitted by the gun club? Regardless of how many permits were applied for, is my understanding correct that the current matter under review by the City is the zone violation?

I have attached the Class II permit application which was submitted. I have also attached the Class II procedures that were sent to Danny O'Neal 3-1-2012 who was the one submitting at that time. I explained when they submitted and at the March 27th hearing that the Class II permit was for the change to a site of a non-conforming commercial business, not a building permit.

The Gun Club withdrew their Class II application in June. The Code Violation is the only matter under review at this time.

0080

A-

Since these are legal interpretation issues that will guide the direction this matter takes, at this point I think it might be prudent for you and I to wait to hear from the City attorney and County attorney regarding the legal aspects I have raised about the applicable ordinances. I realize it may take them a few days as I believe Pat Braden is out until next week for the holidays, and it will probably take Bill Appleton a few days to wrap his arms around this issue. I do not want you and I spinning our wheels until they have weighed in on the applicable codes.

Susan, I would like to make sure we are on the same page regarding this issue. The City and County have fielded many calls about the Gun Club's increase in days of operation. The Gun Club seems to believe the City wants to shut them down which has never been the intention. The City would simply like the Neighbors and the Gun Club to abide by the existing code, thus allowing the Gun Club to operate at its historical days of operation and the surrounding property owners their normal days of quiet non-shooting where they can plan a family BBQ. Please consider that.

Thanks,

Susan

Susan P. Weeks

James, Vernon & Weeks, P.A.

1626 Lincoln Way

Coeur d'Alene, ID 83814

Telephone: (208) 667-0685

Facsimile: (208) 664-1684

E-Mail: sweeks@jvwlaw.net

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0081

From: Cindy Espe [mailto:cindyesepe@hotmail.com]
Sent: Thursday, December 27, 2012 1:29 PM
To: Susan Weeks
Cc: Pat Braden; Dale Pritzl; Bill Appleton; christine@jvwlaw.net; JDThompson Hauser Gun Club; Scott Clark
Subject: RE: Motion for Reconsideration

Susan,

Although I am not an attorney, I will answer your questions with the information I have been given.

Cindy:

Thank you very much for your prompt attention to this matter. I had a copy of the county ordinance, but not the City ordinance. It is my opinion that the ACI ordinance only applies to permit procedures, as indicated in the introduction sentence of Section 5 wherein it states: "The Board of County Commissioners and City of Hauser hereby authorize adoption of additional permit procedures incorporated by reference herein." (Emphasis added.) However, nothing in the ordinance extends it to code violations, which are enforcement proceedings, not permit applications.

The Hauser Code adopted at the time of the ACI agreement is the code used in the area of city impact for permitting and failure to obtain a permit. In Chapter III of the Hauser ACI Code.

A. This chapter requires a permit for all land development and building activity in the city and the surrounding area of city impact and establishes the procedures necessary for the administration of this ordinance.

The enforcement section of Chapter III of the Hauser Code Division 5,

U. When the administrator becomes aware of an activity for which a permit is required by this ordinance, but for which no permit has been approved, he or she shall order the occupant or owner to cease the unpermitted activity. Notice of this order shall be given by delivery to the site and/or certified mail.

0082

Although my clients originally started out with a Class II permit application submitted to the City, which was subsequently converted to a Class I permit application at the direction of the City, the current matter before the City does not involve processing either permit request. Instead, it addresses a code violation that was issued by the City to my client for allegedly violating Hauser's city code.

The Class II permit was required as shown below, the Class I permit is for the building permit, which they will need both.

Chapter I, F-2 Requests for changes to a non-conforming site shall be processed as a Class II permit.

Therefore, I do not believe the ACI ordinance applies as a code violation is not a permit request. Although I did not address this issue in my previous communication, it is my position that Article XII, Section 2 of the Idaho constitution and subsequent case law (including but not limited to *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983) and *Blaha v. Ada County*, 134 Idaho 770, 9 P.3d 1236 (2000)) prohibits a city from issuing a code violation to a county resident for properties outside City boundaries. Assuming the City has jurisdiction to proceed on the code violation against a county property violation, it would not be proceeding under the ACI.

Since it is my belief that all of the Hauser ACI Code applies in the ACI and not just portions of it, I would disagree.

Addressing your specific questions, before I provide answers I need some clarification regarding the City code. It was my understanding that Sterling will only publish a code that a city has certified is its current code. Are you telling me that Ordinance No. 159 was not adopted June 9, 2010 and published as required by law as indicated by Sterling? Or are you telling me that the changes contained in Ordinance No. 159 have not been approved by the County and therefore the City believes the old ACI ordinance provisions apply to the code violation? As soon as I have this answer, I will give you specific details of my motion to reconsider, or I will amend it to comport to the proper code.

Ordinance 159 was adopted by the City of Hauser and published as required and it applies within the City of Hauser, however since the county has not adopted Ordinance 159 yet, the old ACI Hauser Code still applies within the area of city impact and the county has confirmed this with us.

Thank you for your continued attention to this matter.

Susan

0083

Cindy Espe

Susan P. Weeks

James, Vernon & Weeks, P.A.

1626 Lincoln Way

Coeur d'Alene, ID 83814

Telephone: (208) 667-0685

Facsimile: (208) 664-1684

E-Mail: sweeks@jvwlaw.net

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From: Cindy Espe [<mailto:cindyespe@hotmail.com>]
Sent: Thursday, December 27, 2012 8:42 AM
To: sweeks@jvwlaw.net
Cc: Pat Braden; Dale Pritzl; applelaw47@verizon.net; Billi Appleton
Subject: RE: Motion for Reconsideration

Good Morning Susan,

The City of Hauser and Kootenai County have an agreement which I have attached for you that defines the process in the Hauser ACI.

I have also attached Ordinance 107 which is referenced in the Hauser Code. On the website you will find 2 Hauser Codes, one is the information for the ACI which is the older version. The updated Hauser Code has not been adopted by the county which may be some of the confusion.

0084

I would like some clarification on your letter, please.

1. Why do you believe the Notice wasn't properly issued?
2. Who testified that wasn't affected?
3. Who participated in the decision that you believe was affected?
4. What portion of the hearing failed to comply? The sections you are referencing are not in the Hauser ACI Code.
5. This Hauser Joint Planning Commission would be the final decision, unless they appeal to the Joint Board of County Commissioners and Hauser Council members.

Please let me know if you still want to have this heard by the Hauser Joint Planning Commission again and I will get the hearing scheduled.

Thank you,

Cindy Espe

Fax 208-762-7731
Cell 208-818-9053

From: sweeks@jvwlaw.net
To: cindyvespe@hotmail.com
CC: pbraden@kcgov.us; debpritzl@hotmail.com; applelaw47@verizon.net
Subject: Motion for Reconsideration
Date: Wed, 26 Dec 2012 16:22:56 -0800

Dear Ms. Espe:

Our firm has been engaged to represent Hauser Lake Rod & Gun Club with respect to its ongoing Notice of Violation with the City of Hauser. Attached hereto please find a courtesy copy of a motion for reconsideration of the December 11, 2012 decision which I fax filed with the City today.

It is my understanding that my client was informed last week that Ordinance 107 requires it to appeal the Commission's decision within ten (10) days of the commission's decision. I have reviewed the Hauser Municipal Code on the City's web site (which connects to the Sterling Codifier) and do not find such a provision, or this ordinance number. Hauser Code section 8-10-10.E required the City to inform my clients of the appeal process the City intended to utilize with respect to the zoning violation at the time the zoning violation was issued. That was not done, and it appears there has been mass confusion regarding the appropriate appeal process.

I find two code sections that might apply. On code violations, Hauser Municipal Code Section 8-10-10.E appears to require that an appeal of a zoning violation be heard city council. That was not done, so I am assuming Hauser did not interpret its code to allow for application of this code section to the pending notice of violation. On other zoning matters, Hauser municipal code section 8-10-9.E.2 indicates the council may summarily issue a final decision approving the commission's recommendation or may conduct

0085

commission. Perhaps this procedure is the one the City intended to utilize. If this is not the procedure the City intended to follow, please let me know the exact appeal procedures and applicable code section so that my client is not prejudiced by a failure to be informed of the proper appeal procedures. Other than New Year's day, I will be in the office through the holidays.

Thank you for your attention to this matter.

Very truly yours,

Susan P. Weeks

James, Vernon & Weeks, P.A.

1626 Lincoln Way

Coeur d'Alene, ID 83814

Telephone: (208) 667-0685

Facsimile: (208) 664-1684

E-Mail: sweeks@jvwlaw.net

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0086